

MONROE
FEB 06 2009

ROBERT H. SHEM WELL, CLERK
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

UNITED STATES OF AMERICA

CRIMINAL NO. 95-30024-01

VERSUS

JUDGE ROBERT G. JAMES

VICTOR G. KELLEY

MAG. JUDGE KAREN L. HAYES

MEMORANDUM ORDER

On January 8, 2009, the United States Court of Appeals issued a remand of the appeal in the above-referenced matter on the basis that Defendant failed to file a timely notice of appeal. [Doc. No. 637]. Because this was an order in a criminal case, pursuant to Federal Rule of Appellate Procedure 4(b)(1)(A), Defendant had ten days to file his appeal. However, under Rule 4(b)(4), the Court may grant a thirty-day extension of time to file a notice of appeal if it finds there is good cause or excusable neglect. The Fifth Circuit remanded to this Court for a determination whether Defendant had good cause or excusable neglect for failing to file his appeal timely.

On January 26, 2009, the Court issued a Memorandum Order [Doc. No. 638] explaining that Defendant's Notice of Appeal did not state any reason for the lateness of the filing, and, thus, the Court could not determine whether good cause or excusable neglect exists. The Court ordered Defendant show cause within ten (10) business days why he failed to file his Notice of Appeal timely.

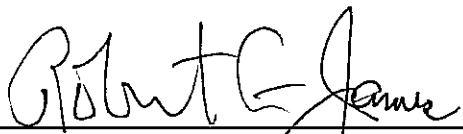
On February 5, 2009, Defendant complied with the Court's Order and filed a Response [Doc. Nos. 639 & 640]. In his Response, Defendant explained the difficulties in filing an appeal within ten (10) days when he is physically located in Yazoo City, Mississippi; his counsel is in Monroe, Louisiana; and his family is in Houston, Texas. He also explained that he and his counsel can

communicate only by U.S. Mail and periodic telephone calls.

In light of the explanation provided by Defendant, the Court finds that Defendant had good cause for the untimeliness of his filing of a Notice of Appeal.

IT IS ORDERED that, under Federal Rule of Appellate Procedure 4(b)(4), Defendant's time for filing a Notice of Appeal is extended to the date of his filing, October 17, 2008. Defendant may proceed with his appeal to the Fifth Circuit.

MONROE, LOUISIANA, this 6th day of February, 2009.



ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE